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**IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

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**JOHN CHRISTOPHER TURNER,**

Plaintiff,

vs.

**IDAHO TRANSPORTATION  
DEPARTMENT, an executive department  
of the state of Idaho.**

Defendant.

**COMPLAINT AND DEMAND FOR  
JURY TRIAL**

Civil No.: CV01-18-06904

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Plaintiff John Christopher Turner (“Mr. Turner”), by and through his attorneys, hereby complains against Defendant Idaho Transportation Department (“ITD”) as follows. Mr. Turner was a dedicated employee of ITD who was being prepared to promote until, in October of 2017, he was fired after having raised concerns and engaged in protected activities related to ITD’s

Nuclear Density Gauge Program. ITD terminated Mr. Turner in violation of Idaho's whistleblower law.

## **I. NATURE OF THE CLAIMS**

This suit is brought under the Idaho Protection of Public Employees Act. Additionally, Mr. Turner seeks damages associated with the Defendant's negligent infliction of emotional distress. Mr. Turner seeks all available remedies including equitable relief, damages, attorneys' fees, costs, and interest.

## **II. PARTIES**

1. Defendant Idaho Transportation Department is an executive department of the State of Idaho pursuant to section 20, article IV of the Idaho Constitution. I.C. § 67-2404.
2. Plaintiff, John Chris Turner, is a citizen of Idaho living in Boise County and at all times relevant herein was an employee of the State of Idaho, Transportation Department.

## **III. JURISDICTION AND VENUE**

3. The Court has subject matter jurisdiction and personal jurisdiction over Defendant.
4. Venue is proper with this Court as the Defendant's principal place of business is within the jurisdiction of the Court and the conduct that occurred was within the jurisdiction of the Court pursuant to Idaho Code § 5-404.
5. The amount in controversy exceeds the jurisdictional requirement of \$10,000.00.

## **IV. GENERAL ALLEGATIONS**

6. ITD employed Mr. Turner beginning on October 20, 2016.
7. Mr. Turner was employed as a Transportation Technician Principal. As a Transportation Technician Principal, Mr. Turner oversaw and coordinated the operations of the ITD structures laboratory.

8. During his employment with ITD, Mr. Turner's work met the standards of ITD. At the time of his termination, Mr. Turner was being groomed to become the Radiation Safety Officer ("RSO") for ITD.
9. On July 11, 2017, a nuclear density gauge was run over by a piece of machinery. This event triggered a review of the ITD's Nuclear Density Gauge Program, in an effort by ITD to avoid an audit by the Nuclear Regulatory Commission.
10. Nuclear density gauges are portable tools used by ITD to test compaction as part of construction projects. Each nuclear density gauge contains a radiation source.
11. ITD's Nuclear Density Gauge Program is governed by various federal and state rules and regulations.
12. The Nuclear Regulatory Commission ("NRC") is the federal agency responsible for ensuring the safety of people who work with radioactive material and the security of certain radioactive materials.
13. In order to control the significant risks associated with the use of nuclear energy, the NRC sets strict health and safety standards for nuclear equipment, defines allowable limits for radiation exposure, and frequently conducts inspections of nuclear products and facilities.
14. The NRC enters into agreements with states that allow the states to regulate radioactive materials used or possessed within the state's border. The NRC maintains oversight and authority over the ITD Nuclear Density Gauge Program.
15. After the nuclear density gauge was damaged in July 2017, another ITD employee began an initial review and found inconsistencies within the ITD files. Those inconsistencies had the potential of involving the NRC.

16. On July 15, 2017, Mr. Turner was asked to review the master files at ITD headquarters as part of the review of the ITD Nuclear Density Gauge Program.

17. As part of his review, Mr. Turner confirmed inconsistencies and shortcomings within the Department's headquarters' files. Mr. Turner could not find necessary paperwork or inventories associated with the ITD Nuclear Density Gauge Program.

18. Mr. Turner reported these issues and his concerns to his supervisor and requested the permission of his supervisor to conduct on-site inventories of the radioactive gauges. The supervisor initially denied Mr. Turner's request. Mr. Turner then asked his supervisor to help him account for all the gauges and asked him to send an email to the different districts in order to inventory the gauges – the supervisor refused.

19. On August 1, 2017, Mike Sprague, Idaho's Chief Radiation Safety Officer told Mr. Turner that ITD had 104 nuclear gauges in the Nuclear Density Gauge Program. However, Mr. Turner initially was only able to account for 82 of the 104 nuclear gauges.

20. Mr. Turner also determined that ITD appeared to only be using seven (7) of the nuclear density gauges during construction projects. Despite the low number of nuclear density gauges actually used, ITD appeared to have requested budget funds to purchase additional and/or replace fully functional nuclear density gauges. Mr. Turner believed these budgetary requests by ITD to be a waste of public funds and raised that issue with ITD management.

21. In an attempt to continue his investigation and audit, and to confirm the number of missing nuclear gauges, Mr. Turner repeatedly asked for nuclear density gauge inventories from various years but only received vague answers from his ITD supervisors.

22. Mr. Turner also notified ITD leadership of his belief that the missing nuclear gauges must be reported to the NRC.

23. Because the nuclear gauges were radioactive devices containing dangerous materials, Mr. Turner was concerned with the potential for these devices ending up in the wrong hands, particularly as “dirty bombs.”

24. On one occasion, when Mr. Turner informed his superiors of his concerns related to dirty bombs and asked if ITD had any idea “how much radioactive material” ITD was missing, the supervisors responded that ITD was aware and was “hoping that the FBI doesn’t show up here [at the Department].”

25. On August 2, 2017, a number of the missing nuclear gauge folders suddenly appeared at an ITD facility, in an area previously searched by Mr. Turner and others.

26. On August 3, 2017, Mr. Turner sent an email to management requesting an in-person meeting to discuss his belief, based on the facts, that there was an active internal agency cover-up regarding the missing nuclear gauges. A member of ITD management responded that he had personally concluded there was no cover up at the Department.

27. During the course of Mr. Turner’s investigation and audit of the nuclear density gauges, ITD management frequently pressured Mr. Turner and asked questions about the nuclear gauge investigation such as “Why are you doing this?” and “Where are you going with this?” or “What do you want from this?”

28. Mr. Turner simply wanted ITD to do what it was supposed to do as part of the ITD Nuclear Density Gauge Program and to follow the law and NRC rules and regulations. Mr. Turner also, on a number of occasions, raised his concerns to ITD management that the missing nuclear density gauges could be converted into a “dirty bomb” if the nuclear gauges fell into the wrong hands.

29. On August 31, 2017, Mr. Turner met with NRC staff members regarding his concerns about the missing nuclear gauges. He also discussed the retaliation against him for participating in the investigation and audit, and also for expressing his concerns regarding waste and violations of law, rule, and regulation. Mr. Turner met with the NRC staff members despite ITD taking steps to try to keep Mr. Turner from talking with the NRC.

30. The NRC opened an investigation related to Mr. Turner's concerns, *In re Allegation RIV-2017-A-0074*.

31. As part of its investigation, the NRC looked into Mr. Turner's concerns about inventories of portable nuclear gauges performed by ITD and the required audits of the ITD radiation protection program.

32. On September 11, 2017, without any prior notice or reasoning, Brenda Williams, ITD's Chief Human Resource Officer ("Ms. Williams") suspended Mr. Turner by sending him a memorandum that stated he was on "Investigative Suspension" effective immediately.

33. During his suspension, ITD prohibited Mr. Turner from entering the premises or speaking with any ITD employees.

34. At the end of the September, 2017, Amy Revis, District Engineer for ITD District No. 3, sent Mr. Turner a notice of ITD's contemplation of disciplinary action.

35. The alleged bases for the contemplated disciplinary action included failure to perform duties, "inefficiency, incompetency, or negligence in performing duties," and "[i]nsubordination." Ms. Revis further claimed that Mr. Turner failed to set a "positive example of public service and good citizenship" by failing to uphold ITD's policies. The notice of contemplated action further suggested that Mr. Turner did not treat all individuals or groups with dignity and respect and that Mr. Turner "hastily performed" a test on one occasion.

36. On October 6, 2017, Mr. Turner responded by letter refuting each of the pretextual allegations. In his response, Mr. Turner also noted that he believed the notice of contemplated action was pretextual and retaliatory “based upon my investigation of the ITD Nuclear Density Gauge Program” which “showed that the State of Idaho could not account for twelve nuclear gauges.” Mr. Turner also noted that he had been targeted by specific individuals at ITD “who are trying to keep this information quiet and trying to cover up.”

37. A few weeks later, on October 13, 2017, ITD terminated Mr. Turner’s employment by letter.

38. In the termination letter, the sole basis for Mr. Turner’s termination was an allegation that he falsified testing records.

39. Mr. Turner’s termination by ITD was pretextual and retaliatory.

40. On November 3, 2017, the NRC sent ITD an Inspection Report and Notice of Violation. The Inspection Report, detailed three (3) Severity Level IV violations. Those violations involved ITD’s failure to:

- a. Limit the possession of portable nuclear gauges to the maximum amount authorized by the NRC license, for a specific manufacturer and model of portable nuclear gauge;
- b. Periodically (at least annually) review the ITD radiation protection program content and implementation; and
- c. Maintain a utilization log documenting the use of portable nuclear gauges at temporary job sites.

Attached hereto as Exhibit “A” is a true and correct copy of the November 3, 2017 Idaho Transportation Department NRC Inspection Report 030-32230/2017-001.

41. On December 29, 2017, the NRC provided Mr. Turner and ITD with its findings related to its investigations. With regard to Mr. Turner's first concern, after a very detailed and thorough investigation, the NRC found as follows:

**Concern 1**

Based on the NRC's review and evaluation, the NRC substantiated your concern that inventories of portable nuclear gauges were not performed routinely by the Idaho Transportation Department radiation safety officer and the licensee was not aware of how many portable nuclear gauges it possessed. The NRC identified one violation associated with this concern. The violation was documented in a Notice of Violation in NRC Inspection Report 030-32230/2017-001.

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**Concern 2**

Based on the NRC's review and evaluation, the NRC substantiated your concern that the Idaho Transportation Department had not performed audits of its NRC-licensed radiation protection program. The NRC identified one violation associated with this concern. The violation was documented in Notice of Violation in NRC Inspection Report 030-32230/2017-001.

Attached hereto as Exhibit "B" is a true and correct copy of the December 29, 2017 letter from the Nuclear Regulatory Commission regarding "Status of Concerns You Raised to the NRC Regarding the Idaho Transportation Department, Allegation RIV-2017-A-0074."<sup>1</sup>

**FIRST CLAIM FOR RELIEF  
(Violation of the Idaho Protection of Public Employees Act)**

42. Mr. Turner alleges and incorporates by reference all of the paragraphs and allegations set forth above.

43. Defendant ITD is an "Employer" under the Idaho Protection of Public Employees Act pursuant to I.C. § 6-2102(4)(a).

44. As alleged above, Mr. Turner engaged in protected activity under I.C. §6-2104(1)-(3) when he: (1) communicated in good faith the existence of waste of public funds, property or manpower or violation or suspected violation of law, rule or regulation; (2) participated in an

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<sup>1</sup> Redacted to remove personal contact information.



investigation related to the missing nuclear gauges; and (3) objected to and/or refused to carry out directives that he reasonably believed violated law, rule, or regulation.

45. As a result of Mr. Turner's protected activity, ITD took adverse actions against him including subjecting him to intimidation and eventually terminated his employment, all in violation of I.C. §6-2104.

46. Mr. Turner has been damaged as a result of ITD's retaliation. He is entitled to recover all resulting damages including lost pay and benefits, future lost pay and benefits, and emotional distress damages pursuant to I.C. § 6-2105.

47. Mr. Turner is also entitled to all reasonable attorney's fees and costs incurred in bringing this action pursuant to I.C. § 6-2105.

**SECOND CLAIM FOR RELIEF**  
**(Negligent Infliction of Emotional Distress)**

48. Mr. Turner incorporates the allegations contained in the paragraphs above as if fully set forth herein.

49. ITD had a legal duty to: (1) not retaliate against an employee who engaged in conduct protected by the Idaho Protection of Public Employees Act, Idaho Code § 6-2101et seq; and (2) exercise ordinary care to prevent unreasonable, foreseeable risk of harm to others.

50. ITD breached its duties when it subjected Mr. Turner to an ongoing pattern of retaliatory conduct, including adverse employment actions against Mr. Turner as described above and otherwise ostracizing him.

51. As a direct and proximate result of the ITD's conduct, Mr. Turner suffered and continues to suffer emotional distress.

52. Mr. Turner physically manifested his emotional distress in one or more of the following manners: insomnia and trouble sleeping, loss of appetite, irritability, and/or headaches.

53. It was reasonably foreseeable that Mr. Turner would suffer emotional distress by being subjected to the retaliatory conduct by ITD as described above.

### **ATTORNEY FEES**

As a result of Defendant Idaho Transportation Department's actions as set forth above, Plaintiff has been required to retain the law firm of STRINDBERG & SCHOLNICK, LLC to prosecute this action and has incurred and will continue to incur costs and attorney fees for which Plaintiff is entitled to a separate award pursuant to Idaho Code §6-2106, Idaho Code §12-117, Rule 54(e)(1) of the Idaho Rules of Civil Procedure, as well as any other applicable statute or rule, in an amount to be determined by the Court.

### **REQUEST FOR JURY TRIAL**

Plaintiff hereby requests a jury trial pursuant to Rule 38 of the Idaho Rules of Civil Procedure.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests that the Court enter judgment in his favor and against Defendant ITD and award the following relief.

- a. Back pay and benefits, in amounts to be determined at trial;
- b. Compensatory (emotional distress) and consequential damages;
- c. Punitive damages as allowable;
- d. Front pay and benefits in lieu of reinstatement;
- e. Injunctive and/or declaratory relief;
- f. Pre-judgment and post-judgment interest at the highest lawful rate;
- g. Attorneys' fees and costs of this action, including expert witness fees, as appropriate;

- h. An offset to his increased tax burden;
- i. A civil fine in accord with Idaho Code §6-2106; and,
- j. Any such further relief as justice allows.

Dated this 11th day of April, 2018.

**STRINDBERG & SCHOLNICK, LLC**

/s/ T. Guy Hallam, Jr., of the Firm

T. Guy Hallam, Jr.

Erika Birch

Jonathan K. Thorne

Attorneys for Plaintiff

# **EXHIBIT A**

**Idaho Transportation Department  
NRC Inspection Report 030-32230/2017-001**



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION IV  
1600 E. LAMAR BLVD  
ARLINGTON TX 76011-4511

November 3, 2017

Mr. Kimbol R. Allen, P.E.  
Chief Engineer/Division Administrator  
Idaho Transportation Department  
P.O. Box 7129  
Boise, ID 83707

SUBJECT: NRC INSPECTION REPORT 030-32230/2017-001 AND NOTICE OF VIOLATION

Dear Mr. Allen:

This letter refers to the inspections conducted on: (1) July 26, 2017, at an Idaho Transportation Department (ITD) temporary job site near Idaho Falls, Idaho, and at the ITD District 5 field office in Pocatello, Idaho; (2) August 29, 2017, at the ITD District 9 field office in Boise, Idaho; (3) on August 30, 2017, at the ITD District 3 field office in Boise, Idaho, and (4) on September 19, 2017, at the ITD District 1 field office in Coeur D'Alene, Idaho. The inspection was an examination of activities conducted under your license as they relate to public health and safety, to confirm compliance with the U.S. Nuclear Regulatory Commission's (NRC) rules, regulations, and with the conditions of your license. Within these areas, the inspection consisted of a selected examination of procedures and representative records, observations of activities, independent radiation measurements, and interviews with personnel. The preliminary inspection findings were discussed with you and Ron Wright, Central Laboratory Manager, on August 29, 2017. A final telephonic exit briefing was conducted with Mr. Wright, Amy Revis, E3 Engineer, Michael Sprague, Radiation Safety Officer, Kenneth Acree, Senior Transportation Technician, and Clint Hoops, Structural Materials Engineer, on October 4, 2017.

Based on the results of this inspection, the NRC has determined that three Severity Level IV violations of NRC requirements occurred. These violations were evaluated in accordance with the NRC Enforcement Policy, which can be found at the NRC's Web site at [www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html](http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html). The violations are cited in the enclosed Notice of Violation (Notice). The violations are being cited in the enclosed Notice because they were identified by the NRC during the inspection. The violations involved the failure to: (1) limit the possession of portable nuclear gauges to the maximum amount authorized by the NRC license, for a specific manufacturer and model of portable nuclear gauge; (2) periodically (at least annually) review the ITD radiation protection program content and implementation; and (3) maintain a utilization log documenting the use of portable nuclear gauges at temporary job sites.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. The guidance in NRC Information Notice 96-28, "Suggested Guidance Relating to Development and Implementation of Corrective Action," may be helpful in preparing your response. You can find the Information Notice on the NRC website at: <http://pbadupws.nrc.gov/docs/ML0612/ML061240509.pdf>. Information regarding the reason for the violation, the corrective actions taken and planned to correct the

K. Allen

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violation and prevent recurrence, and the date when full compliance will be (was) achieved should be addressed. The NRC review of your response to the Notice will also determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.390 of the NRC's "Agency Rules of Practice and Procedure," a copy of this letter, its enclosure, and your response, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy or proprietary information so that it can be made available to the Public without redaction.

Should you have any questions regarding this letter or the enclosed Notice, please contact Janine F. Katanic, PhD, CHP, at 817-200-1151 or the undersigned at 817-200-1455.

Sincerely,

*/RA by MRShaffer Acting For/*

Michael C. Hay, Chief  
Materials Licensing and Inspection Branch  
Division of Nuclear Materials Safety

Docket: 030-32230  
License: 11-27076-01

Enclosure:  
Notice of Violation

cc w/Enclosure:  
Mark Dietrich, Idaho Radiation Control Program Director

## NOTICE OF VIOLATION

Idaho Transportation Department  
Boise, Idaho

Docket No. 030-32230  
License No. 11-27076-01

During an NRC inspection conducted on: (1) July 26, 2017, at an Idaho Transportation Department (ITD) temporary job site near Idaho Falls, Idaho, and at the ITD District 5 field office in Pocatello, Idaho; (2) August 29, 2017, at the ITD District 9 field office in Boise, Idaho; (3) on August 30, 2017, at the ITD District 3 field office in Boise, Idaho; and (4) on September 19, 2017 at the ITD District 1 field office in Coeur D'Alene, Idaho, three violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. License Conditions 6, 7, 8, and 9, Items F and G, of NRC License 11-27076-01, Amendment No. 11, dated November 16, 2016, specify the type of byproduct material, chemical and/or physical form, maximum amount that the licensee may possess at any one time under the license, and authorized use of byproduct material.

Contrary to the above, on August 29, 2017, the licensee possessed byproduct material in excess of the maximum amount authorized in License Conditions 6, 7, 8, and 9, Items F and G, of NRC License 11-27076-01, Amendment No. 11, dated November 16, 2016. Specifically, on August 29, 2017, the licensee possessed 14 Humboldt Scientific Model 5001 nuclear density gauges, in excess of the 10 authorized by License Condition 8, Items F and G.

This is a Severity Level IV Violation (Section 6.3.d)

- B. 10 CFR 20.1101(c) requires the licensee shall periodically (at least annually) review the radiation protection program content and implementation.

Contrary to the above, from January 1, 2014 to August 29, 2017, the licensee failed to periodically (at least annually) review the radiation protection program content and implementation.

This is a Severity Level IV Violation (Section 6.3.d)

- C. License Condition 21.B of NRC License 11-27076-01, Amendment No. 11, dated November 16, 2016, requires, in part, that except as specifically provided otherwise in this license, the licensee shall conduct its program in accordance with the statements, representations, and procedures contained in the facsimile dated August 9, 2011.

In the facsimile dated August 9, 2011, the licensee committed to implementing and maintaining the operating, emergency, and security procedures described in the errata sheet to Appendix H of NUREG-1556, Volume 1, Revision 1, dated July 2005.

The errata sheet to Appendix H of NUREG-1556, Volume 1, Revision 1, dated July 2005, requires the licensee to sign out portable gauges in a log book (that remains at the storage location) including the date(s) of use, name(s) of the authorized users who will be responsible for the portable gauge, and the temporary job site(s) where the portable gauge will be used.

Enclosure



Contrary to the above, from at least January 1, 2016, through September 19, 2017, the licensee failed to sign out portable gauges in a log book (that remains at the storage location) including the date(s) of use, name(s) of the authorized users who will be responsible for the portable gauge, and the temporary job site(s) where the portable gauge will be used. Specifically, from at least January 1, 2016, through September 19, 2017, at the District 1 office in Coeur D'Alene, Idaho, the licensee failed to maintain a log book with the above listed information for gauges assigned to the District.

This is a Severity Level IV Violation (Section 6.3.d)

Pursuant to the provisions of 10 CFR 2.201, Idaho Transportation Department, is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, with a copy to the Regional Administrator, Region IV, 1600 E. Lamar Blvd., Arlington, Texas 76011, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include, for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken; and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued requiring information as to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

Your response will be made available electronically for public inspection in the NRC Public Document Room or in the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy or proprietary information so that it can be made available to the public without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information).

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days of receipt.

Dated this 3rd day in November 2017.

# **EXHIBIT B**



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION IV  
1600 EAST LAMAR BOULEVARD  
ARLINGTON, TEXAS 76011-4511

December 29, 2017

Chris Turner  
[REDACTED]

SUBJECT: STATUS OF CONCERNS YOU RAISED TO THE NRC REGARDING THE IDAHO  
TRANSPORTATION DEPARTMENT

RE: ALLEGATION RIV-2017-A-0074

Dear Mr. Turner:

This letter pertains to the concerns you raised to the U.S. Nuclear Regulatory Commission (NRC) in your meeting with NRC staff members Mr. Pete Hernandez and Dr. Janine Katanic on August 31, 2017. Your concerns were related to portable nuclear gauges and discrimination at the Idaho Transportation Department. You also spoke with NRC staff member Lynn Berger on October 19, 2017, to decline participation in the NRC's Alternative Dispute Resolution Program, and to request an NRC investigation.

We have completed our review of Concerns 1 and 2 as indicated in the enclosure to this letter. The NRC staff is continuing with its review of Concern 3. When we have completed our review, we will notify you of our findings, actions, and the final evaluation of your concern.

Thank you for notifying us of your concerns. We will advise you when we have completed our review. If we can be of further assistance, please call Mr. Jesse M. Rollins, Senior Allegation Coordinator, Monday through Friday between 8 a.m. and 4:30 p.m. toll-free [REDACTED], or on the NRC Safety Hotline at 1-800-695-7403. You may also provide information to Mr. Rollins in writing at the address listed in the letterhead of this letter.

Sincerely,

Michael C. Hay, Chief  
Materials Licensing & Inspection Branch  
Division of Nuclear Materials Safety

Enclosures: Status of Concerns



STATUS OF CONCERNS  
ALLEGATION RIV-2017-A-0074

**Concern 1**

Inventories of portable nuclear gauges were not performed routinely by the Idaho Transportation Department radiation safety officer, and the licensee was not aware of how many portable nuclear gauges it possessed.

**Response to Concern 1**

In evaluating this concern, the NRC conducted an inspection of the Idaho Transportation Department between July and October 2017. The inspection included the Idaho Transportation Department's main office in Boise, as well as field offices in Boise, Pocatello, and Coeur d'Alene, and at a temporary job site near Idaho Falls. The inspectors reviewed inventory and related records maintained by the Idaho Transportation Department, and performed interviews of the staff.

The NRC License 11-27076-01, Amendment 11, dated November 16, 2016, License Condition 15, requires, in part, that the Idaho Transportation Department perform physical inventories every 6 months or at other intervals approved by the NRC, to account for all sources and/or devices received and possessed under the license. The requirement does not state that the inventory is required to be performed by the radiation safety officer. The inspectors found that at least every 6 months, the individual field office radiation safety officers at the Idaho Transportation Department district offices conducted physical inventories of all of the portable nuclear gauges possessed under the license and assigned to their respective offices.

Additionally, the inspectors were also provided with leak test results for portable nuclear gauges, which corroborated that each portable nuclear gauge had been inventoried and accounted for on a 6 month interval. However, the inspectors found that the radiation safety officer listed on the NRC license had not compiled all of this information for all of the Idaho Transportation Department district offices, and as a result was not fully aware of the Idaho Transportation Department compliance with the inventory requirement.

The inspectors were able to clear up a misunderstanding that was held by the radiation safety officer, some members of the Idaho Transportation Department management, and other staff regarding the number of portable nuclear gauges possessed by the Idaho Transportation Department. The NRC's licensing practices typically set limits on the maximum amount of radioactive material that a licensee can possess. For portable nuclear gauge licensees, this maximum activity that may be possessed is directly related to the maximum number of portable nuclear gauges that may be possessed. The NRC license allowed the possession of a certain total number of portable nuclear gauges, but inventories performed by the field office radiation safety officers revealed that the Idaho Transportation Department possessed fewer portable nuclear gauges than the total number authorized to be possessed. This was interpreted by some managers and staff that a number of portable nuclear gauges were missing.

The inspectors reviewed records maintained by the licensee, including procurement records, vendor records, historical inventories, disposal records, and other documents, going back over 10 years. These records were cross-compared with each other. Based on this review, the



inspectors were able to confirm, with a high degree of certainty that at the time of the inspection, the licensee could account for all portable nuclear gauges in its possession, with no unaccounted for portable nuclear gauges.

However, the Idaho Transportation Department license does not just authorize a certain total number of gauges that can be possessed; it specifies the number of portable nuclear gauges from specific manufacturers and model types that can be possessed. The inspectors identified that for a certain manufacturer and model of portable nuclear gauge, the licensee possessed an amount in excess of the maximum amount authorized on the license. This was identified as a violation of the NRC's regulatory requirements and the terms and conditions of the Idaho Transportation Department's NRC license.

Based on the NRC's review and evaluation, the NRC substantiated your concern that inventories of portable nuclear gauges were not performed routinely by the Idaho Transportation Department radiation safety officer and the licensee was not aware of how many portable nuclear gauges it possessed. The NRC identified one violation associated with this concern. The violation was documented in a Notice of Violation in NRC Inspection Report 030-32230/2017-001 (see Attachment).

## **Concern 2**

Idaho Transportation Department has not performed audits of its NRC-licensed radiation protection program.

## **Response to Concern 2**

In evaluating this concern, the NRC conducted an inspection of the Idaho Transportation Department between July and October 2017. The inspection included the Idaho Transportation Department main office in Boise, as well as the field offices in Boise, Pocatello, and Coeur d'Alene, and at a temporary job site near Idaho Falls. The inspectors reviewed records maintained by the Idaho Transportation Department, and performed interviews of the staff.

Title 10 of the *Code of Federal Regulations*, Part 20, Section 1101(c) requires licensees to periodically (at least annually) review the radiation protection program content and implementation. These program reviews are often referred to as "audits." During the onsite inspection, licensee staff were not able to produce any records of annual reviews of the radiation protection program. Following the inspection, the inspectors had a telephone conversation with the radiation safety officer. The radiation safety officer acknowledged that since he had been the radiation safety officer, he had not performed any periodic review or audit of the radiation protection program, and was not aware of any that had been performed to address the overall the Idaho Transportation Department radiation protection program. This was identified as a violation of the NRC's regulatory requirements.

Based on the NRC's review and evaluation, the NRC substantiated your concern that the Idaho Transportation Department had not performed audits of its NRC-licensed radiation protection program. The NRC identified one violation associated with this concern. The violation was documented in a Notice of Violation in NRC Inspection Report 030-32230/2017-001 (attached).

**Concern 3**

You claim that because you raised concerns regarding the Idaho Transportation Department portable nuclear gauge program, you were removed from your job duties involving the portable nuclear gauge program, and you were suspended from work with pay.

**Status of Concern 3**

On October 19, 2017, to decline participation in the NRC's Alternative Dispute Resolution Program, and to request an NRC investigation. The NRC opened an investigation into your claim of discrimination on October 25, 2017. We will notify you of our findings, actions, and the final evaluation of your concern.